801-08/PJG/EJC
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PHOENIX BULK CARRIERS, LTD. Plaintiff - against - AMERICA METALS TRADING, LLP Defendant.	10 Civ. 2963 (NRB) ANSWER TO COUNTERCLAIM

Plaintiff Phoenix Bulk Carriers, Ltd. ("Phoenix Bulk"), by its attorneys Freehill Hogan & Mahar, LLP, as and for its Answer to the Counterclaim of the Defendant American Metals Trading LLP ("AMT"), alleges upon information and belief as follows:

1. Admits that to the extent Defendant and Counterclaimant AMT's claim arises from the alleged breach of a maritime contract(s) of charter party, that claim would fall under the Court's admiralty and maritime jurisdiction pursuant to 28 U.S.C. §1333, and to the extent the contract contained an arbitration provision, within 28 U.S.C. §1331 and the United States Federal Arbitration Act, 9 U.S.C. §1 *et. seq.*, but except as so admitted, denies knowledge or information to suffice to form a belief with respect to the remaining allegations contained in paragraph "1" of the Counterclaim.

2. Admits the allegations contained in paragraph "2" of the Counterclaim.

3. Admits that Plaintiff Phoenix Bulk was at all times material hereto a foreign business organization organized under foreign law, with an agent located at 88 Valley Road,

Middleton, Rhode Island, but except as so admitted, denies knowledge or information sufficient to form belief with respect to the remaining allegations contained in paragraph "3" of the Counterclaim.

4. Admits that an entity commonly referred to as Cosipar is involved in the pig iron business in Brazil, but except as so admitted, denies knowledge or information sufficient to form a belief with respect to the remaining allegations contained in paragraph "4" of the Counterclaim.

5. Denies knowledge or information sufficient to form a belief with respect to the allegations contained in paragraph "5" of the Counterclaim.

6. Denies knowledge or information sufficient to form a belief with respect to the remaining allegations contained in paragraph "6" of the counterclaim.

7. Denies knowledge or information sufficient to form a belief with respect to the remaining allegations contained in paragraph "7" of the Counterclaim.

8. Admits that during the period 2004-2008, various bulk vessels were chartered from Phoenix Bulk to non-party NMT in connection with the shipment of bulk cargo from Brazil to various U.S. and European ports, but except as so admitted, denies knowledge information sufficient to form a belief with respect to the remaining allegations contained in paragraph "8" of the Counterclaim.

9. Admits that on or about 2004, non-party NMT was indebted to Phoenix Bulk for, *inter alia*, demurrage, which claim was resolved, but except as so admitted, denies knowledge or information sufficient to form a belief with respect to the remaining allegations contained in paragraph "9" of the Counterclaim.

10. Admits that subsequent to 2007, Phoenix entered into charter party contracts with the Defendant AMT, and that subsequent to 2007, Phoenix also entered into charter party contracts with non-party NMT, but except as so admitted, denies knowledge or information sufficient to form a belief with respect to the remaining allegations contained in paragraph "10" of the Counterclaim.

11. Admits that on or sometime after 2007, Defendant sought to enter the market to charter vessels, but except as so admitted, denies knowledge or information sufficient to form a belief with respect to the remaining allegations contained in paragraph "11" of the Counterclaim.

12. Admits that on or about March 23, 2007, Plaintiff and Defendant entered into two charter party agreements each for the transport of bulk shipment, which contracts contained specific laycan dates and specific loading berth requirements, all of which could not be fulfilled due to the prevailing conditions, but except as so admitted denies knowledge or information sufficient to form a belief with respect to the remaining allegations contained in paragraph "12" of the Counterclaim.

13. Admits that the voyages contemplated under the two March 23, 2007 charter party contracts were not performed as a consequence of events which give rise to no liability on the part of Phoenix Bulk, and which precluded performance as contemplated by the parties under the specific terms of those contracts, but except as so admitted, denies the remaining allegations contained in paragraph "13" of the Counterclaim.

14. Denies the allegations contained in paragraph 14 of the Counterclaim.

15. Denies knowledge or information sufficient to form a belief with respect to the remaining allegations contained in paragraph "15" of the counterclaim.

16. Denies knowledge or information sufficient to form a belief with respect to the remaining allegations contained in paragraph "16" of the Counterclaim.

17. Denies that AMT ever quantified its claim for alleged damages or made demand for payment of a quantified claim, and otherwise denies the remaining allegations contained in paragraph "17" of the Counterclaim.

18. Admits that the charter party contracts provide for arbitration in New York, but except as so admitted, denies knowledge or information sufficient to form a belief with respect to the remaining allegations contained in paragraph "18" of the Counterclaim.

19. Denies knowledge or information sufficient to form a belief with respect to the remaining allegations contained in paragraph "19" of the Counterclaim.

20. Denies knowledge or information sufficient to form a belief with respect to the remaining allegations contained in paragraph "20" of the Counterclaim.

21. Denies knowledge or information sufficient to form a belief with respect to the remaining allegations contained in paragraph "21" of the Counterclaim.

22. Admits the allegations contained in paragraph "22" of the Counterclaim.

23. Admits the allegations contained in paragraph "23" of the Counterclaim.

24. Admits that Phoenix chartered the M/V CLIPPER MONARCH to non-party NMT and that payments made by NMT in respect to that charter were, at NMT's request, applied against the non-performance of a voyage contemplated for January2009, but except as so admitted, denies knowledge or information sufficient to form a belief with respect to the remaining allegations contained in paragraph "24" of the Counterclaim.

25. Denied to the extent Defendant makes reference to an entity "MMT", but to the extent that reference was intended to be NMT, admits that NMT chartered the identified vessels

from it and that claims arising from the non-performance of the January 2009 contract were settled, but except as so admitted, denies knowledge or information sufficient to form a belief with respect to the remaining allegations contained in paragraph "25" of the Counterclaim.

26. Admits that the demurrage due on the vessels identified in paragraph 26 was settled, but except as so admitted, denies knowledge or information sufficient to form a belief with respect to the remaining allegations contained in paragraph "26" of the Counterclaim.

27. Denies knowledge or information sufficient to form a belief with respect to the remaining allegations contained in paragraph "27" of the Counterclaim.

28. Denies the allegations contained in "28" of the Counterclaim.

29. Admits the allegations contained in paragraph "29 of the Counterclaim.

30. Denies the allegations contained in paragraph "30" of the Counterclaim.

WHEREFORE, Plaintiff Phoenix Bulk prays:

a. That an order be entered denying Defendant's application for countersecurity on the basis that its counterclaim arises under separate and distinct contracts which do not give rise to any right of countersecurity under Supplemental Admiralty E(7);

b. That an order be entered denying Defendant's application for an order vacating Plaintiff's Ex Parte Order of Attachment and a judgment dismissing Plaintiff's Verified Complaint;

c. That an Order be entered denying any application for a stay of Phoenix' claim in arbitration on the basis that no countersecurity is required; and

d. That the Court retain jurisdiction over this action for the purpose of enforcement of award the Plaintiff may obtain and any subsequent, different and alternative relief as may be just and proper in the circumstances.

Dated: New York, New York
July 30, 2010

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Attorneys for Plaintiff
Phoenix Bulk Carriers, Ltd.

By: ______________________
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CERTIFICATE OF SERVICE

I hereby certify that on July 30, 2010, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF, which will automatically send email notification of such filing to all attorneys of record. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified below in the manner specified, either via transmission of Notice of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronic Notice of Electronic Filing.

Via ECF
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/s/ Peter J. Gutowski
Peter J. Gutowski